UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte BRADFORD A. RITTER

Appeal No. 2005-1741
Application No. 09/921,464

ON BRIEF

Before THOMAS, BARRY and MACDONALD, **Administrative Patent Judges.**

MACDONALD, **Administrative Patent Judge.**

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-31.

Invention

Appellant's invention relates to a method and system for synthesizing a texture of a desired size from a sample texture is provided. The method comprises the steps of generating a matrix of the desired size, and providing values to the matrix. The values include random values and at least a portion of the values represents a desired structure according to which graphical features of a synthesized texture are to substantially conform. The method further comprises executing a texture synthesis process that utilizes the matrix to generate a synthesized texture of the desired size having graphical features arranged therein substantially in conformance with the desired structure. Appellant's specification at page 5, paragraph 0013.

Claim 1 is representative of the claimed invention and is reproduced as follows:

1. A method for synthesizing a texture of a desired size from a sample texture, said method comprising:

generating a matrix of said desired size;

providing values to said matrix, wherein said values comprise random values and wherein at least a portion of said values represents a desired structure according to which graphical features of a synthesized texture are to substantially conform; and

executing a texture synthesis process that utilizes said matrix to generate a synthesized texture of said desired size having graphical features arranged therein substantially in conformance with said desired structure.

References

The references relied on by the Examiner are as follows:

Gossett	6,232,981	May 15, 2001
Kent	4,601,055	July 15, 1986

Wei et al. (Wei); Fast Texture Synthesis Using Tree-Structured Vector Quantization; SIGGRAPH 2000 Conf. Proc.; pp. 479-488.

Rejections At Issue

Claims 1-10, 14, 17-20, 23, 25, and 27-31 stand rejected under 35 U.S.C. § 102 as being anticipated by Wei.

Claims 11-12 and 21-22 stand rejected under 35 U.S.C. § 103 as being obvious over Wei.

Claim 13 stands rejected under 35 U.S.C. § 103 as being obvious over the combination of Wei and Gossett.

Claims 15-16, 24, and 26 stand rejected under 35 U.S.C. § 103 as being obvious over the combination of Wei and Kent.

Throughout our opinion, we make references to the Appellant's briefs, and to the Examiner's Answer for the respective details thereof.[1]

OPINION

With full consideration being given to the subject matter on appeal, the Examiner's rejections and the arguments of the Appellant and the Examiner, for the reasons stated **infra**, we reverse the Examiner's rejection of claims 1-10, 14, 17-20, 23, 25, and 27-31 under 35 U.S.C. § 102; and we reverse the Examiner's rejection of claims 11-13, 15-16, 21-22, 24, and 26 under 35 U.S.C. § 103.

Only those arguments actually made by Appellant have been considered in this decision. Arguments that Appellant could have made but chose not to make in the brief have not been considered. We deem such arguments to be waived by Appellant [see 37 CFR § 41.37(c)(1)(vii) effective September 13, 2004 replacing 37 CFR § 1.192(a)].

I. Whether the Rejection of Claims 1-10, 14, 17-20, 23, 25, and 27-31 Under 35 U.S.C. § 102 is proper?

It is our view, after consideration of the record before us, that the disclosure of Wei does not fully meet the invention as recited in claims 1-10, 14, 17-20, 23, 25, and 27-31. Accordingly, we reverse. For purposes of this decision we treat claim 1 as representative of claims 1-10, 14, 17-20, 23, 25, and 27-31.

[1] Appellant filed an appeal brief on August 13, 2004. Appellant filed a reply brief on December 7, 2004. The Examiner mailed an Examiner's Answer on November 2, 2004.

It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim. **See In re King**, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and **Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.**, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

With respect to independent claim 1, Appellant argues at page 6 of the brief, "*Wei* fails to teach a matrix that is used in its texture synthesis process which includes both random values and values that represent a desired structure." The Examiner responds at page 15 of the brief by essentially repeating the rejection. Without more, we see no basis in the Wei reference for the position taken by the Examiner. We find Appellant's argument persuasive. We find that the Wei reference does not teach a process matrix that includes both types of values.

Therefore, we will not sustain the Examiner's rejection under 35 U.S.C. § 102.

II. Whether the Rejection of Claims 11-13, 15-16, 21-22, 24, and 26 Under 35 U.S.C. § 103 is proper?

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the invention as set forth in claims 11-13, 15-16, 21-22, 24, and 26. Accordingly, we reverse.

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a **prima facie** case of obviousness. **In re Oetiker**, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). **See also In re Piasecki**, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner can satisfy this burden by showing that some objective teaching in

the prior art or knowledge generally available to one of ordinary skill in the art suggests the claimed subject matter. **In re Fine**, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Appellant. **Oetiker**, 977 F.2d at 1445, 24 USPQ2d at 1444. **See also Piasecki**, 745 F.2d at 1472, 223 USPQ at 788.

An obviousness analysis commences with a review and consideration of all the pertinent evidence and arguments. "In reviewing the [E]xaminer's decision on appeal, the Board must necessarily weigh all of the evidence and argument." **Oetiker**, 977 F.2d at 1445, 24 USPQ2d at 1444. "[T]he Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion." **In re Lee**, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002).

With respect to dependent claims 11-13, 15-16, 21-22, 24, and 26, we note that the Gossett or Kent references each in combination with the Wei reference fails to cure the deficiencies of Wei noted above with respect to claim 1. Therefore, the Examiner has not met the initial burden of establishing a **prima facie** case of obviousness, and we will not sustain the Examiner's rejection under 35 U.S.C. § 103 for the same reasons as set forth above.

Conclusion

In view of the foregoing discussion, we have not sustained the rejection under 35 U.S.C. § 102 of claims 1-10, 14, 17-20, 23, 25, and 27-31; and we have not sustained the rejection under 35 U.S.C. § 103 of claims 11-13, 15-16, 21-22, 24, and 26.

REVERSED

JAMES D. THOMAS)
Administrative Patent Judge)
)
)
)
) BOARD OF PATENT
LANCE LEONARD BARRY) APPEALS
Administrative Patent Judge) AND
) INTERFERENCES
)
)
)
ALLEN R. MACDONALD)
Administrative Patent Judge)

ARM/gjh

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400